

Decision for dispute CAC-UDRP-104721

Case number	CAC-UDRP-104721
Time of filing	2022-07-25 08:43:40
Domain names	LYONDELLCHEMICALCOMPANY.COM

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)
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Complainant

Organization	LyondellBasell Industries Holdings B.V.
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Complainant representative

Organization	Barzanò & Zanardo Milano S.p.A.
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Respondent

Name	James Grant
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OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant shows to be the owner of fifty trademarks registered in different countries and regions around the word that incorporate the wording "LYONDELLBASELL" in relation to a range of products and services relating to chemicals, petrochemicals, fuels, olefin polymers, and research and consultancy in the fields of chemical and petrochemical processes.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant is a multinational chemical company with European and American roots going back to 1953-54 forming part of the LyondellBasell Group which is a group of various affiliated companies under the ultimate control of LyondellBasell Industries N.V., headquartered in The Netherlands.

LyondellBasell Group has become the third largest plastics, chemicals and refining company and the largest licensor of polyethylene and polypropylene technologies in the world. With more than 13,000 employees around the world and manufactures at 55 sites in 17 countries.

The Complainant owns rights to the trademark LYONDELLBASELL in relation to a range of goods and services relating to chemicals, petrochemicals, fuels, olefin polymers, and research and consultancy in the fields of chemical and petrochemical processes.

Furthermore, Lyondell Chemical Company, an affiliate of the LyondellBasell Group owns a number of registrations, in several countries, for the wording LYONDELL in relation to the same goods and services.

The disputed domain name <lyondellchemicalcompany.com> was registered on 25 April, 2022 and currently does not resolve to an active website. However, Complaint asserts that the domain name was used for purposes of redirection the website visitors to the official website of LyondellBasell Group with the intention of sending and receiving e-mails, possibly thus for the purposes of attempted phishing and fraud.

No information are known about the Respondent who registered the disputed domain name under a privacy shield.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

However, a preliminary procedural question has been raised with respect to certain of the trademark rights asserted and the named Complainant in this action. The named Complainant is LyondellBasell Industries Holdings B.V. and this entity is the listed owner of the asserted registrations for the LYONDELLBASELL trademark.

The Complaint also asserts rights in the trademark LYONDELL and submits evidence of registrations owned by an entity named Lyondell Chemical Company which is not listed as a Complainant in the present action. In asserting the LYONDELL trademark registrations, the Complaint claims that "According to the UDRP jurisprudence any one party of multiple related parties, on behalf of the other interested parties, may bring a Complaint and is to be considered to have standing in dispute (see paragraph 1.4.2 of WIPO Overview 3.0 and the decisions mentioned thereto)." Paragraph 1.4.2 of the cited WIPO Overview 3.0 states that "Where multiple related parties have rights in the relevant mark on which a UDRP complaint is based, a UDRP complaint may be brought by any one party, on behalf of the other interested parties."

The Complaint goes on to state that "LyondellBasell Group is formed of various affiliated companies, all of them under the ultimate control of LyondellBasell Industries N.V., headquartered in The Netherlands."

Although it does not specifically claim that LyondellBasell Industries Holdings B.V. and Lyondell Chemical Company are two of these "affiliated companies" under the umbrella of LyondellBasell Group, from the evidences submitted, namely copies of

a corporate brochure and a 2020 Annual Report that mention the existence of many companies related to LyondellBasell Industries N.V, the Panel accepts that LyondellBasell Industries Holdings B.V. and Lyondell Chemical Company are affiliated companies, though a more specific claim and evidence would have been preferred. Therefore assertion of the LYONDELL trademark registrations is deemed appropriate.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 15 of the Rules states that the Panel shall decide a Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law deemed applicable.

In the case of default by a Party, Rule 14 states that if a Party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under the Rules, the Panel shall draw such inferences therefrom as appropriate.

In the present case, the Respondent has not submitted any Response and consequently has not contested any of the contentions made by the Complainant.

The Panel proceeds therefore to decide only on the basis of the Complainant's factual statements and the documentary evidences provided in support of them.

1. The disputed domain name is confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant has submitted evidences in support with its arguments, demonstrating that it owns registrations of the LYONDELLBASELL trademark and its affiliate entity – Lyondell Chemical Company owns registrations of the LYONDELL trademark.

It is also claims that the Complainant's affiliated entity LyondellBasell Industries N.V. owns multiple domain names which incorporate the LYONDELLBASELL or LYONDELL trademarks.

Since the disputed domain name fully incorporates the main word element of previously registered trademarks referred to by the Complainant and adds non-distinctive and descriptive terms, the Panel considers that the confusing similarity well founded in this case.

Accordingly, the Panel finds that the Complainant has rights to the LYONDELLBASELL and LYONDELL trademarks and that the disputed domain name is confusingly similar to such trademarks. Thus, the Complainant has satisfied paragraph 4(a)(i) of the Policy.

2. The Respondent has no rights or legitimate interests in respect of the disputed domain name

With reference to 4(c)(ii), the Complaint states that the Respondent is not commonly known by the disputed domain name, that the Complainant "has no relationship with the Respondent whatsoever" and that it "has never received any approval" to use the trademarks of the Complainant and its affiliated companies.

Further, the Complainant's asserts that the domain name was acquired and used with fraudulent phishing intention (more specifically "storage spoofing", also known as terminal spoofing which represents a specific form of phishing) which the Respondent has not disputed.

Finally, the website at the domain name is currently inactive and there is no evidence of it having ever been associated with any legitimate non-commercial or fair use.

Therefore, and in the absence of a response, the Panel finds that the Complainant has made a prima facie case that the Respondent has no rights or legitimate interest in the disputed domain name.

3. The disputed domain name was registered and is being used in bad faith

As to the bad faith, the Complainant argues that Respondent registered the domain name with actual knowledge of Complainant's trademarks. Actual knowledge of a Complainant's rights in a trademark may be proven through a totality of circumstances surrounding the registration of the disputed domain name.

Secondly, the Complainant asserts that the Respondent was using the disputed domain name in furtherance of an email phishing scheme. Such activity provides quite firm evidence of bad faith use, for commercial gain, based upon confusion with an asserted trademark.

Given the widespread presence of the Complainant's trademarks and the way how the Respondent was using the domain name which is confusingly similar to the Complainant's trademarks and multiples trademarks owned by the Complainant's affiliates, in the absence of sufficient evidence to the contrary and rebuttal from the Respondent, the Panel infers that the Complainant's assertion that the domain name was registered and used in bad faith are well founded.

Consequently, the Complainant has satisfied paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. LYONDELLCHEMICALCOMPANY.COM: Transferred

PANELLISTS

Name	JUDr. Hana Císlerová, LL.M.
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DATE OF PANEL DECISION 2022-08-18

Publish the Decision